



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order of Possession for unpaid rent or utilities, a Monetary Order for unpaid rent or utilities, and to recover the filing fee.

The Landlord's agents, J.M. and L.J. attended the teleconference hearing. The Tenant E.T. attended. The Tenant K.T. did not attend. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As K.T. did not attend the hearing, service of the Landlord's Application for Dispute Resolution and Notice of a Dispute Resolution Hearing (the "Application Materials") was considered. J.M. testified that the Application Materials were served on the Tenants by registered mail on August 7, 2014. The registered mail tracking number and customer receipt were provided in evidence. Section 90 of the Act provides that documents served in this manner are deemed served five days later. Accordingly, I find that the Tenants were served the Application Materials by August 12, 2014.

Issues to be Decided

- Is the landlord entitled to an Order of Possession based on unpaid rent or utilities?
- Is the landlord entitled to Monetary Order based on unpaid rent or utilities?

Background and Evidence

The relevant evidence with respect to the tenancy is as follows:

1. The parties entered into a written Residential Tenancy Agreement for a month to month tenancy (the "Tenancy Agreement").
2. The Tenancy Agreement was signed by both Tenants and the Landlord on May September 7, 2005.

3. The tenancy began October 1, 2005.
4. Rent was payable monthly payable on the 1st of the month.
5. The Tenants paid a security deposit of \$340.00 on May 1, 2014.
6. The Tenants did not pay rent for July 2014, nor did they pay rent for August 2014.
7. E.T. submitted in evidence the following:
 - a. a letter dated June 30, 2014 from E.T. to J.M. wherein E.T. gave a one month's Notice to End Tenancy attempting to end the tenancy for herself only;
 - b. emails from, what appears to be E.T.'s shared email account with K.T., dated July 2, 2014 to J.M. wherein E.T. attempted to withdraw her notice given June 30, 2014.
 - c. a letter dated July 30, 2014 wherein E.T. wrote that she intended to leave the rental unit by July 30, 2014;
 - d. a further letter from E.T. to J.M. dated July 30, 2014 wherein E.T. writes that:
 - i. she and her children have vacated the rental unit;
 - ii. K.T. intends to remain in the rental unit.
 - iii. she wishes to be "removed from the lease effective immediately";
 - iv. she wishes to make a payment arrangement to pay the outstanding balance of July's rent, which she identifies as \$1,007.00;
 - e. emails between E.T. and J.M. dated August 6, 2014 wherein
 - i. E.T. proposes a payment arrangement; and

- ii. J.M. confirms that the “termination notice” was for both E.T. and K.T. and that she intends to make an application for an Order of Possession and a Monetary Order.
8. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent dated July 3, 2014 and which was served by posting to the rental unit door on July 24, 2014 (the “10 Day Notice”).
9. The Tenants did not pay the outstanding rent, nor did they make an application to dispute the notice.

Analysis

The June 30, 2014 letter from E.T. wherein she gave her one month notice to end the tenancy is valid. A Notice to End Tenancy by a tenant cannot be unilaterally withdrawn and requires the Landlord’s consent if the tenancy is to continue beyond the effective date of notice.

E.T.’s request to be removed from the tenancy agreement and allow K.T. to continue in occupation of the rental unit is an attempt to assign which is specifically not permitted by section 16(20) of the Tenancy Agreement.

As E.T. and K.T. are both signatories to the Tenancy Agreement they are jointly and severally liable.

Based on the Landlord’s testimony and Proof of Service submitted in evidence, I find that the Tenants were served with the 10 Day Notice by posting to the rental unit door. Section 90(c) provides that document served in this manner are deemed served 3 days later; accordingly, I find that the tenants were served the Notice as of July 27, 2014.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenants did not pay the outstanding rent, nor did they apply to dispute the Notice.

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an Order of Possession effective two (2) days after service. This Order of Possession may be filed in the Supreme Court and enforced as an order of that Court.

In the Application Materials the Landlord is seeking a monetary order in the amount of \$3,049.00 comprised of the following:

Item Description	Amount
1. Unpaid rent for July 2014	\$1,008.00
2. Unpaid rent for August 2014	\$1,008.00
3. Loss of rent for September 2014	\$1,008.00
3. NSF fee for June 2014 rent	\$25.00
TOTAL MONETARY CLAIM	\$3,049.00

J.M. agreed at the hearing that only \$1,007.00 was owing for July 2014 as the Tenants had a \$1.00 credit. Accordingly, I find that \$1,007.00 is owing for July 2014.

As K.T. remained in occupation of the rental unit in August 2014, I find that \$1,008.00 is owing for August 2014.

As the Order of Possession has been granted, and provided that the Tenants vacate the premises by August 31, 2014, no rent is payable for September 2014. Should the Tenants remain in occupation beyond August 31, 2014, the Landlord has leave to apply for a further Monetary Order.

As the landlord's application had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

I find that the landlord has established a total monetary claim of \$2,040.00 comprised of the following:

Item Description	Amount
1. Unpaid rent for July 2014	\$1,007.00
2. Unpaid rent for August 2014	\$1,008.00
3. NSF fee for June 2014 rent	\$25.00
TOTAL MONETARY CLAIM ALLOWED	\$2,040.00

Accordingly, I make a Monetary Order in the amount of \$2,040.00 This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective two (2) days after service. This Order of Possession may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord is entitled to a Monetary Order in the amount of \$2,040.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 28, 2014

Residential Tenancy Branch

